

APPEAL NO. 93051

On November 17, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing officer determined that the appellant (claimant herein) was not injured in the course and scope of his employment with his employer, (employer), and did not give timely notice of his alleged injury to his employer. The hearing officer decided that the respondent (carrier herein) is not liable for workers' compensation benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act).

DECISION

Finding that the claimant's request for review was not timely filed, the hearing officer's decision has become final by operation of law.

Article 8308-6.41(a) provides that a party that desires to appeal the decision of the hearing officer shall file a written appeal with the Appeals Panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division of hearings. At the close of the hearing, the hearing officer advised the parties of the time limit for filing an appeal. The hearing officer's decision was mailed to the parties on December 8, 1992. The claimant does not state when he received the decision. Accordingly, under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)) the claimant is deemed to have received the decision on December 13, 1992, which was five days after the date mailed. A request for review is presumed to be timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision, and is received by the Commission not later than the 20th day after the date of receipt of the decision. Rule 143.3(c). The claimant's request for review is dated January 11, 1993 and, according to the postmark on the envelope, was mailed on January 13, 1993. The request for review was received by the Commission on January 20, 1993. In order to meet the first requirement of Rule 143.3(c), the request would have had to been mailed by December 28, 1992, but it was not mailed until January 13, 1993. Consequently, the claimant's appeal was not timely filed and the hearing officer's decision has become final under the provisions of Article 8308-6.34(h).

Although the appeal was not timely filed, we have reviewed the record and conclude that if the appeal had been timely, we would have affirmed the hearing officer's decision because it is supported by the evidence and is not against the great weight and preponderance of the evidence.

The claimant testified that he was injured on (date of injury) while working at (Employer), which was a client of the employer's. He said he hurt his low back and injured a prior hernia repair when he lifted brackets. The claimant did not introduce any medical records or reports indicating an injury. He said he immediately notified his supervisor of his injury and that a week later he told the woman who gave him his check that he had been injured. The supervisor denied receiving notice of injury from the claimant and denied

seeing the claimant get hurt. There was no evidence that the woman who gave the claimant his check was in a management or supervisory capacity. She told the claimant to report his injury to PF, a senior supervisor. The claimant said he reported his injury to Ms. F about a month later. However, Ms. F said that she did not receive a report of injury from the claimant until March 27, 1992. The employer's records showed that the claimant worked for the client on July 15 and 16, 1991, but not on (date of injury). Article 8308-5.01(a) requires notice of injury to the employer within 30 days of the injury. The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given the evidence. Article 8308-6.34(e). The hearing officer's determinations that the claimant did not sustain an injury at work as claimed and that he did not timely report his injury are supported by sufficient evidence and are not against the great weight and preponderance of the evidence.

The hearing officer's decision has become final pursuant to Article 8308-6.34(h) because the claimant did not file a timely appeal.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge